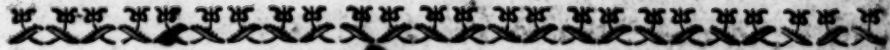


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T H E
QUESTION STATED,

W H E T H E R

The: FREEHOLDERS of
MIDDLESEX lost their Right,
by voting for Mr. *WILKES* at
the last Election?



[Price One Shilling and Six-pence.]



K Middlesex Freeholders

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MIDDLESEX lost their Right,
by voting for Mr. WILKES at
the last Election? *Q. 1*

In a LETTER from a MEMBER of
PARLIAMENT to one of his Constituents.

The SECOND EDITION.

*In civitate discordi, & ob crebras principum mutationes inter
libertatem ac licentiam incertâ, magnis motibus res agebantur.*

TACITUS.

L O N D O N :

Printed for G. WOODFALL, at *Charing Cross*; and Messrs.
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T H E

QUESTION STATED,

*Whether the Freeholders of Middlesex lost their
Right, by voting for Mr. WILKES at
the last Election?*

In a LETTER from a Member of Parlia-
ment to one of his Constituents.

S I R,

I RECEIVED your Letter, in which
you so particularly ask me, whether I am
one of those who assented to the Vote,
declaring Col. Lutterel duly elected in the
House of Commons, though (you add) the
Numbers on the Poll were 296 *for*, 1143
against him.

B

To

To a common understanding nothing may appear less accountable than such a Decision. You, indeed, have had a liberal Education, are of the Profession of the Law, and know how to state this Matter on its proper Ground : but still confess yourself unable to reconcile it to any Principle of the Constitution, and can no more bring it within the Rule of Law than of Arithmetic.

I cannot wonder at your Perplexity; which, I believe, is not confined to that Circle of your Acquaintance, who (you tell me) are as much bewildered as you are; but, you apply to one by no means able to clear your Doubts; for, I must answer the Question you put as to myself, by telling you, that I voted against altering the Return on the 15th of April; and against declaring *Col. Lutterel* *duly elected* on the 8th of May; nor have I heard any Thing to make me change the Principles on which I gave my negative Voice.

But, though it was my Misfortune to dissent from the Majority, yet I flatter myself that you will not impute to me a Breach of
that

that Obligation, which I owe to my Country and Constituents. I acknowledge the Parliamentary Privileges, you have invested me with, to be, *Not mine, but yours*; I received them, in trust on your Account and for your Benefit; nor can I ever entertain so preposterous an Idea, as that of having a right to take away your Privileges, by virtue of that very Privilege you gave me, in order to defend them. It was therefore unnecessary to make an Apology for the Freedom with which you enquire after my Conduct; you have a right to know every Part of it; but there is a peculiar Propriety in the Elector's Attention to his Representative on all such Questions as concern the Liberty of the Subject.

The Middlesex Election was a Cause, in which, not only the Freeholders of that County were interested, but every other Freeholder in the Kingdom, every Owner of a Franchise, and every other Person, who, though not immediately represented himself, shares the Benefits of our Constitution in common with those who send their Representatives to Parliament. For the *Freedom of*

Election is the foundation of every other Right.
If I may describe it poetically, it is

*The Fountain, from the which Our Current
springs;
Or else dries up.*

SHAKESPEAR.

It distinguishes us, not as Freemen only, but above all Freemen upon Earth. Since it is the Privilege of the Englishman alone, * “ To
“ chuse those Delegates to whose Charge is
“ committed the Disposal of his Property,
“ his Liberty, his Life.” His Property can be burdened with no Tax, that his Delegate, (in Proportion to his Circumstances) must not pay equally with himself; his Liberty and Life cannot be touched but by Laws, that bind the Makers in common with all that are to be governed by them: Nay, more; These Delegates are to take care, that all the executive Powers of Government are kept within the Limits of the Law; if the Ministers of the Crown should exercise despotic Powers; or Judges give the Sanction

* Dr. Blackstone's Considerations.

of Law to illegal Impositions on the Property of the Subject ; or deny the Benefit of the Law in Cases of personal Liberty ; then have the Representatives of the People a Right to check, controul, or impeach (as the Incident requires) such Ministers and such Judges *.

Of the Essence of the Right of Election, is the Connection of the Elected with the Electors. For that Man cannot be a *Real* Representative, who does not act for his Constituents as they would act for themselves ; he must assert *his* Rights as *their* Rights, *his* Liberty as *their* Liberty ; and regulate the Exercise of his Power by that Rule of Law, which is the common Guardian of us all. Honoured and distinguished by a *Trust*, but bound by that trust to *do*, as he

* See the Impeachment of the Barons of the Exchequer for their Judgment in the Case of Ship-Money. The Impeachment of Judge Berkeley for a Denial of a Habeas Corpus. The Impeachment of Lord Chief Justice Scroggs, for issuing a General Warrant, &c. &c. &c.

would

would be done by, did he remain as one of those who gave it.

The very Language of our Constitution marks this Identity of Interests, on which the first Principle of Representation is founded. When the King speaks to his Commons in Parliament, *then* he speaks to all his Subjects; the sense of Parliament is assumed as the Sense of the People; the Privileges of Parliament are the Privileges of the People. — But should the Member of Parliament ever disavow this Connection, he would throw aside his *Collective*, and take up a *Personal* Character. As an Individual, he would become an Adventurer, pursuing his own Objects, and sit in Parliament, as one of a distinct Society, whose Powers and Advantages he is to raise as high as he can above the Level of those, whom Fortune has not placed in the same prerogative Station as himself. And new Doors being opened (besides that only one We have hitherto known, *The Election of the People*) the Dependency of the Member on his Constituents ceases of Course,

Course, and their Bond of Union is forever cancelled.

During the Course of the Summer I may, perhaps, find leisure to give you a circumstantial Account of the whole Proceedings of the last Session ; but your Impatience to be informed of the Event that closed it, confines me to that Point at present.

On the 14th of April, the House resolved,
 “ *That Henry Lawes Lutterel, Esq;* ought to
 “ have been returned a Knight of the Shire,
 “ to serve in this present Parliament for the
 “ County of *Middlesex*, but it was ordered
 “ likewise, *that leave be given* to petition this
 “ House touching the Election of Henry
 “ Lawes Lutterel, Esq; within fourteen Days
 “ next.

The Freeholders did accordingly present their Petition on the 14th Day, in the following Terms.

To

*To the Right Honourable the Commons of
Great-Britain in Parliament assembled.*

*The humble Petition of the Freeholders of
the County of Middlesex,*

S H E W E T H,

*T*HAT your Petitioners being informed by
the Votes of this honourable House, that
the Return for the said County of Middlesex hath
been amended, by rasing out the Name of John
Wilkes, Esq; and inserting the Name of Henry
Lawes Lutterel, Esq; instead thereof; and that
leave was given to petition this House touching
the Election of Henry Lawes Lutterel, Esq;

Your Petitioners in consequence thereof beg
leave to represent to this Honourable House, that
the said Henry Lawes Lutterel had not the Ma-
jority of legal Votes at the said Election; nor did
the Majority of the Freeholders, when they voted
for John Wilkes, Esq; mean thereby to throw away
their Votes, or to wave their Right of Repre-
sentation; nor would they by any means have
chosen to be represented by the said Henry Lawes
Lutterel, Esq; Your Petitioners therefore appre-
hend

bend he cannot sit as the Representative of the said County in Parliament, without manifest Infringement of the Rights and Privileges of the Freeholders thereof.

Your Petitioners humbly hope that this honourable House will give leave that they may be heard by their Counsel against the said Election and Return; and grant them such further Relief as they in their Wisdom and Justice shall think meet.

The Reception of this Petition made me hope, We should have considered the Merits of it, free from the Influence of Our former Vote; since it was a mere Mockery of Justice, to pretend to *hear* a Cause, if that Cause was already determined. But the Course of the last Debate leads me to consider the Return and Election both together, as one and the same Question.

It was debated then, *Not* whether it is the sole Right of the House of Commons, to examine and determine all Matters relating to the Right of Elections of their Own

Members ; but, whether in examining all such Matters, their Jurisdiction is not to be regulated by the Law of the Land ; especially in a Case, where the Rights of Persons, not their Members, are collaterally indeed, but effectually and fatally concluded ; *Rights*, to which, as Members of Parliament, they owe their Being.

The Power of the House to expel Mr. Wilkes upon an accumulative Charge of Offences, was not called in Question.

But it was absolutely *denied*, that a Resolution of the House of Commons declaring one of its Members *incapable* by *Law*, could constitute such a legal Incapacity as annihilated the Votes of the Freeholders.

The Right of voting in Elections is a *legal* Right ; it is not *given*, and cannot be taken away by the *occasional Will* of either House of Parliament ; for every Elector is under one or other of these Qualifications ; He is either a Freeholder, or has a Right by a Charter, or by Prescription. It is the Law which has enabled the Crown to grant Charters, and the

the Law which maintains every Right granted *by* Charter. The Right of Prescription is by common Law; for Prescription is common Usage, and common Usage is common Law. The Estate of the Freeholder is created and held by the common Law. And the Right of voting being of the Essence of the Freehold, you may as well take away the Freehold itself, as the Right of voting, which accrues by virtue of that Freehold.

I admit that the Exercise of this Right is in many Cases restrained both by common and statute Law.

I admit likewise, that, whenever a Franchise is exercised against Law, *Pro istâ Vice*, it is forfeited.

But it must be admitted likewise, that under this Constitution, no Man can incur such a Forfeiture, without doing some Act, that the Law has marked and promulgated as illegal. Penal Laws are not merely Scourges to inflict Stripes on the Backs of Criminals, but Buoys to give Warning against running foul on the Commission of Offence.

The Question therefore now is, by what Law was Mr. Wilkes rendered incapable, so that the Freeholder of Middlesex, by acting in Defiance of that Law, should be disfranchised, for having given him his Vote?

Permit me to recommend to your Attention, Doctor Blackstone's Commentaries on the Law of England, as one of the most useful, accurate, and comprehensive Treatises, that has been written in our Language. The Author was unanimously chosen Professor of Law at Oxford, and by his Ability in that Office did honour to the great and learned Body of his Electors. I adopt the Sentiments, and admire the Perfections of that Performance; and should I hear its Tenets disputed, or Assertions contradicted in any political Conversation, I shall continue to prefer the *Thoughts* of the Professor, to the *Words* of the Politician.

I shall copy then *verbatim* the learned Professor's Enumeration of legal Disabilities, of which some are common, others of statute Law; the latter calculated to preserve both the Freedom of Parliament within the
House,

House, and Freedom of Election without; they exclude the inferior Officers of the Revenue, and other Dependents Who can have no free-will of their own, but must act, not as the Representatives of the People, but Agents of the Ministry. These Persons are forbidden also by Statute 12. K. W. to use the Influence of Government in Elections.

The Disqualifications at common Law are, Aliens, or Minors; for the natural Affection of an Alien is bound to another Country; his Allegiance due to another Sovereign; his Principles formed in favour of another Constitution: Besides, Aliens are incapable of holding any Estates of Freehold for their own Benefit.

A Minor is not by Law intrusted to manage his own, and therefore not allowed to manage the Affairs of the Nation.

There must not be any of the twelve Judges, because they sit in the Lords House; nor of the Clergy, for they sit in the Convocation; nor Persons attainted of Treason or Felony, for they are unfit to sit any where.

Sheriffs

Sheriffs of Counties, and Mayors and Bailiffs of Boroughs are not eligible in their respective Jurisdictions, as being Returning Officers; (for the Law allows no Man to be a Judge in his own Cause,) but Sheriffs of one County are eligible to be Knights of another.

The Difabilities by Statute Law are :

That no Persons concerned in the Management of Duties or Taxes created since 1692, except the Commissioners of the Treasury; nor any of the Officers following, (viz. Commissioners of Prizes, Transports, Sick and Wounded, Wine Licences, Navy and Victualling; Secretaries or Receivers of Prizes; Comptrollers of the Army Accounts; Agents of Regiments; Governors of Plantations and their Deputies; Officers of Minorca or Gibraltar; Officers of the Excise and Customs; Clerks or Deputies in the several Offices of the Treasury, Exchequer, Navy, Victualling, Admiralty, Pay of the Army or Navy, Secretary of State, Salt, Stamps, Appeals, Wine Licences, Hackney Coaches, Hawkers and Pedlars) nor any Persons

sons who hold any new Office under the Crown, erected since 1705, are capable of being elected Members. That no Person having a Pension under the Crown, during Pleasure or for any Term of Years, is capable of being elected. The other Disqualifications are the want of £.600 a Year for the Knight of the Shire, and £.300 a Year for Burghership.

The Professor closes his Account with (what Lord Coke said before him that) subject to these Restrictions and Disqualifications every Subject of the Realm is eligible of common Right.

If then Mr. *Wilkes* is neither Alien nor Minor; Judge, nor Parson; nor was Sheriff of Middlesex; nor has been convicted of Treason or Felony; nor holds any Office under the Government whatsoever, He still is *eligible of common Right*.

But it was argued that every Man, though eligible of common Right, might put himself out of the Condition of that common Right, and by his own Behaviour forfeit his
Eli-

Eligibility; and that Mr. Wilkes *had* incurred this Forfeiture.

If this Doctrine be true, there is a Fund of Deprivation, that is not to be found in any Law Books, but exists in the Imagination, and to be produced by the Invention (of some great Lawyer perhaps) on the Spur of a particular Occasion, to deprive an obnoxious Man of his common Right, and by parity of Reason, why not of his Life? but as I still think the *known* Law of the Land my Birth-right, by which I am to stand or fall; Permit me to state what Mr. Wilkes's Offences specifically are, and let them speak for themselves, whether they *are*, or are *not*, comprehended in the Catalogue of *legal* Disabilities. At the Bar of the House he confessed himself to be the Author and Publisher of what the House of Commons resolved to be an insolent, scandalous, and seditious Libel.

As the House has so resolved it; be it so; I shall say nothing to the contrary; but Treason, or Felony (the only Crimes that create an Incapacity) are not comprehended in this Part of the Charge.

The

The Libel itself was a prefatory Remark
on a * Letter of Lord Weymouth's to the
Surry

* To the Printer of The St. James's Chronicle.

S I R,

I Send you the following authentic State Paper, the Date of which, prior by more than three Weeks to the fatal 10th of May, shews how long the horrid Massacre in St. George's Fields had been planned and determined upon, before it was carried into Execution, and how long a hellish Project can be brooded over by some infernal Spirits without one Moment's Remorse.

(C O P Y)

S I R,

St. James, April 17, 1768.

HAVING already signified the King's Pleasure to the Lord Lieutenant of the County in which you reside, with Regard to the Measures to be taken *in general* for preserving the Peace at a Time when so very riotous a Disposition has discovered itself among the common People, I make no Doubt but either some Steps have, or will immediately be taken by him on that Head; and, I take it for granted, that, as Chairman of the Sessions, you will meet the Gentlemen, who act in the Commission of the Peace for the Borough of Southwark, and East-Hundred of Brixton, to consult together, and fix upon some Plan for securing the publick Tranquillity against any Mischiefs which may happen, should the same indecent Spirit

D

of

Surry Justices, which Mr. Wilkes published in the St. James's Chronicle.

As

of Tumult and Disorder which has appeared in the City and Liberties of Westminster, spread itself to those Parts, which are within the Line of your Duty, and though I am persuaded it is unnecessary to suggest to you, or the Gentlemen who will meet you, any Part of your Duty upon such an Occasion, yet, after the recent alarming Instances of Riot and Confusion, I can't held apprizing you, that much will depend upon the preventive Measures which you shall, in Conjunction with the other Gentlemen in the Commission of the Peace, take, upon your Meeting, and much is expected from the Vigilance and Activity with which such Measures will be carried into Execution. When I inform you, that every possible Precaution is taken to support the Dignity of your Office ; that upon Application from the civil Magistrate at the Tower, the Savoy, or the War-Office, he will find a Military Force ready to march to his Assistance, and to act according as he shall find it expedient and necessary. I need not add, that if the public Peace is not preserved, and if any riotous Proceedings, which may happen, are not suppressed, the Blame will, most probably, be imputed to a Want of prudent and spirited Conduct in the Civil Magistrate. As I have no Reason to doubt your Caution and Discretion in not calling for Troops till they are wanted ; so, on the other Hand, I hope you will not delay a Moment calling for
their

As far as that Preface can be construed into a personal Insult against Lord Weymouth, I detest it. I sincerely respect that noble Person. But I consider this Letter, not as the Act of an Individual, but of Administration in general; and I should scorn to impute to Administration a premeditated Design to occasion Murder, but still there are tenets in the Letter, that an Englishman is warranted to animadvert upon with the utmost Freedom.

their Aid, and making Use of them effectually where there is Occasion; that Occasion always presents itself, when the Civil Power is trifled with and insulted, nor can a Military Force ever be employed to a more constitutional Purpose, than in the Support of the Authority and Dignity of Magistracy.

I am, &c.

*****.

P. S. I have, for the greater Caution, sent Copies of this Letter to the Members for the Borough, and Mr. Pownall. If you should have received no Directions from Lord Onslow for a Meeting, you will consider this as sufficient Authority for that Purpose.

*Daniel Ponton, Esq; Chairman of the
Quarter Sessions at Lambeth.*

What I allude to, is this, “ As I have no
 “ reason to doubt your Caution and Discre-
 “ tion in not calling for Troops till they are
 “ wanted ; so on the other hand, I hope you
 “ will not delay a Moment calling for their
 “ Aid and making Use of them *effectually*
 “ where there is occasion. That Occasion
 “ *always* presents itself when the Civil Power
 “ is trifled with and insulted ; nor can a
 “ Military Force ever be employed to a more
 “ constitutional Purpose, than in the Support
 “ of the Authority and Dignity of Magistracy.”

I presume I shall not misconstrue the Sense
 of the Noble Writer, in supposing that by
 making use of the Military *effectually*, he
 means *Firing*. Is this then the Language of
 our Law ? Do we live under a Civil, or a
 Military Government ? Does the Law autho-
 rize *Firing* in every Case (for he says it *always*
 presents itself) when the Civil Magistrate is
 trifled with and insulted ? For God’s sake, let
 me ask, what is being trifled with, and what
 is being insulted ? are we doomed to instant
 Death by Orders that we can neither define
 nor know the extent of ? What childish and
 ri-

ridiculous Affront may not give a Justice of the Peace Ground to say, he is *trifled with* and *insulted*? and is Life of so little Value, that it may be taken away by such a Construction, as any Justice of the Peace may give to such an Order of a Secretary of State?

I wish to draw a Veil over every Tragic subsequent Event. I hope all Orders respecting the Military will hereafter be given with the exactest Precision and the utmost Caution. But I am only now to ask, by what Law does this Preface of Mr. Wilkes deprive him of the Common Right of being elected into Parliament. I am free to say more, for was I a Freeholder of Middlesex, so far am I from thinking, that to make the severest Animadversions on such a Letter, is a Ground of Incapacity, the more a Man arraigns (what I take to be) such unconstitutional Positions, the fitter he is to be entrusted with the Rights of the People.

The next Article is, that Mr. Wilkes has been convicted in the Court of King's Bench
of

of having printed and published a Seditious Libel, and three obscene and impious Libels.

For the Seditious Libel Mr. Wilkes was expelled seven Years ago. I am not going to dispute the Rectitude of punishing a Man twice over for the same Offence. I only assume the Decision of the House itself; that, his first Expulsion for writing the North-Briton, No. 45, did not render him incapable of being elected into the present Parliament: for the Expulsion itself is an Acknowledgment of the Validity of the *Election*.

He is convicted also of *three impious and obscene Libels*; of the Contents of those Libels I am, and ever will be ignorant. Whatever Mischief they may do, is chargeable upon those who brought them to public Notoriety: But the Reasons that take away the Ground of Incapacity as Author of the North-Briton, apply to the other Publications: for his Election that has been affirmed, was subsequent to both Convictions.

The

The last Cause of Expulsion is, “ That by
 “ the Judgment of the Court of King’s Bench,
 “ Mr. Wilkes has been sentenced to undergo
 “ twenty two Months Imprisonment, and is
 “ now in Execution under the said Judgment.” This indeed may seem to constitute a *temporary* incapacity in Mr. Wilkes ; since he cannot, during the Term of his Imprisonment, attend the Business of his Constituents in Parliament ; but as that Term will expire in two Years, and the Parliament will last five Years longer, it would be very absurd to contend, that an Incapacity is to remain, when the very cause of the Incapacity subsists no longer.

* Mr. Woollaston was expelled, being a Custom House Officer, and returned to Parliament in defiance of a recent Act that disqualified him from sitting in Parliament ; but he resigned his Office, was chosen again, and sat in the same Parliament from which he had been expelled.

* Journals 1692.

Absence

Absence on Military Service, or Foreign Ambassy, Private Business or Pleasure, creates no Incapacity to be elected. Imprisonment, separate from the Guilt, which I consider apart, can be urged, as nothing more than a State of Absence, and the Act 7, Hen. 4. directs, that Persons fairly and indifferently chosen shall be returned, be they *present* or *absent*.

I flatter myself I have cleared the Ground of every Objection that can lie against the Freeholders Right of voting on the Plea of Disability incurred by Mr. Wilkes, either by Statute or by common *Law*. But it was urged, Mr. Wilkes was rendered incapable by the Law of Parliament, which is the Law of the Land as much as either Statute or Common Law: I admit it to be so; but I aver likewise that Law is not a Being of instantaneous Creation, but exists only in the known Customs and Usages of Parliament. I am sorry to add, that whoever searches the Journals, may find Precedents almost for any thing; some passed in the casual Anger of the Day, some in the notorious Corruption of the Time:

But

But for the present Measure there is no Precedent, similar either in Principle or Fact.

Those quoted, are of Serjeant Cummins at Malden ; and Mr. Ongley at Bedford.

At Malden the Poll stood {	Serj. Cummins	215
	Mr. Bramston	215
	Mr. Tuffnel	168
	Sir W. Jolliffe	128

But the House resolved (May 20, 1715)
 “ that Serjeant Cummins having willfully
 “ refused to take the Oath of Qualification
 “ as directed by an Act of Parliament of the
 “ 9th of Q. Ann ; and not having at any
 “ time before the Meeting of this Parliament
 “ taken the said Oath, *his election* is thereby
 “ void. And that Mr. Tuffnel was duly
 “ elected.

In the Case of Bedford (16th April, 1728)
 Mr. Ongley had 465 Votes, and his Competitor Mr. Ollebar 240 only. But it appeared by the Custom House Books that Mr. Ongley was by the Commissioners of the Customs
 E appointed

appointed to an Office in the Customs under their Direction ; and (the Act 12, 12, W. III.) against Officers in the Customs sitting in Parliament, being read ; and no Surrender of the said Office, before the Election, appearing ; it was resolved, “ That Samuel Ongley, Esq ;
 “ having an Office touching collecting the
 “ Customs at the Time of the Election,
 “ is incapable of *claiming* to sit in Parliament
 “ for the said Borough, and that Mr. Olle-
 “ bar was duly elected.”

Your own good Sense has marked the essential Point wherein these two Cases differ from that of the Middlesex Election. Serjeant Cummins and Mr. Ongley were both disqualified by Act of Parliament from claiming to sit in Parliament. The Law was *promulgated* ; the Electors if they did not, might have known it : they exercised their Franchises against Law, and therefore, *pro ista vice*, forfeited their Right of Voting. When a Law is once published, Ignorance is no Excuse for Disobedience, but it is our Right to *know*, if We please, every Law by which we are liable to be punished.

The

The Journals indeed afford one Precedent of a Member being expelled the House of Commons, re-elected, and declared incapable of sitting again in that Parliament. A Precedent similar in every Point, but that in which it ought to have been decisive, *the conclusion*. I mean the Expulsion of Sir Robert Walpole*.

Before I state the Case, let me call your Attention to the Fact and Period of Time when it happened.

Sir Robert Walpole's Crime was called an *high breach of trust and notorious Corruption*; for which he was expelled, sent to the Tower, and declared incapable to sit again in that Parliament.

When you consider the Dealings of modern Ministers with Brokers, Jobbers, Directors and Contractors of all Sorts, you will be apt to

* Journals 23, Jan. 1709.

smile both at Sir Robert Walpole's Sentence, and his Crime; which was precisely this. He had an old faithful Servant, past his Labour, to whom he gave a Contract for Forage, in hopes that some Profit might accrue to assist him in his Infirmary and Age. The Man found his Health would not permit him to perform the Contract, but, with his Master's leave, assigned it over to a third Person, on Consideration of receiving 500*l*. and Sir Robert Walpole endorsed the Agreement. But the famous Tory Ministry of Queen Ann had just taken the Reins of Government. Their Object was to alter the Protestant Succession. Mr. Walpole stood foremost in the Rank of those who adhered to that Succession; and who by their Adherence prevented a Revolution in favour of the Stuart Family. 'Twas the Cause therefore of the House of Hanover, and the Vigor with which he supported it, that made Sir Robert Walpole's Expulsion necessary. And if I was even arraigning the Power of Expulsion, I should want no other Proof of it's ill Effects than the single Act of Expelling Sir Robert Walpole.

But

But I am only now to state the Case, and see whether it authorized our Decision in the Middlesex Election; or whether, that Decision was made in direct Contradiction to it?

Sir Robert Walpole (January 17, 1712) was expelled for the Crime I have just stated. His Expulsion and the Cause of it were notified in the Writ. The Ministers set up one Mr. Samuel Taylor to oppose him.

A great Majority of the Freemen of Lynn persisted in their former Choice, but those who voted against him *petitioned*; and their Petition alledged; “that Mr. Taylor was duly elected their Burgefs;” But the Mayor returned Sir Robert Walpole, “*though expelled the House*” “*and then a Prisoner in the Tower,*” on which the House came to these two Resolutions.

1st. That Rob. Walpole, Esq; having been this Session of Parliament committed a Prisoner to the Tower of London, and expelled this House for a high Breach of Trust in the Execution of his Office, and notorious Corruption,
when

when a Secretary at War, *was* and *is* incapable of being elected a Member to serve in this present Parliament.

2d. That Samuel Taylor, Esq; is *not* duly elected a Burgess to serve in this present Parliament for the said Borough.

It was said indeed, that the Notification sent to the Electors confirmed the Law in this Case ; for if after *that* Mr. Walpole had been retorted upon the House again, the House would have declared Mr. Taylor, or any other Candidate, (however small the Numbers upon the Poll) duly elected : often have I observed the abuse of Precedents, but this is the very first quotation of what the House *would* have done. Yet let Us make allowance.—What can be said in the Case—where a Precedent *must* be found ; and what the House *did* is point blank *against* one. What that Precedent *was* is full in our Teeth ; but in such a Case, what can be done better than to say, what *would* be done ? — If the Incapacity made the Burgesses Votes *illegal*, the Notification was unnecessary. There was none in
the

the Instances of Malden and Bedford. For the Law was the same *before* as *after* the Writ, and declared to be so. But if the Incapacity was *not legal*, the Notification so far from making it so, was itself *illegal*. For Lord Coke (4 Inst. 48) affirms, “ *The Writs of Parliament cannot be altered without an Act of Parliament.*” And the Electors are bound by the Act 7, Hen. 4, not to regard any Alteration of the Writ; for it directs them, *To chuse Two Persons fairly and indifferently, any request or Command to the contrary notwithstanding.*

If the incapacity of Mr. Walpole made the Votes of those who polled for him *illegal*, Mr. Taylor then would have had a legal Right to his Seat in Parliament; and the Conduct of the House would have been so preposterously unjust, as to declare in the first Resolution Mr. Taylor to have the *legal Right*, and in the second *deprive* him of it.

This Precedent in Truth affords but one Construction, which is, that the House meant to reprobate Mr. Taylor's Pretensions. The
Ministers

Ministers would certainly have been glad to support him, if they had been able ; but the Ministers of that Day had not Influence enough to establish a Seat in Parliament against a Majority of Legal Votes, on the Basis of an Incapacity declared by a Vote of the House of Commons only. Nor, can there be a doubt, that the Sheriff, had he returned Mr. Taylor without a Majority of Legal Votes, would have acted in defiance of the Resolution of the House. Mr. Taylor stood exactly on the same ground as Mr. Luttrell, and the House resolved that he was *not* duly elected.

But it was asserted by the great Lawyers who led the Debate, that the Incapacity of Mr. Wilkes was of common Law, and the Logic used to prove the Assertion was, that in all Cases of Election, the House of Commons is by Law the sole and supreme Court of Judicature, from whence there lies no Appeal, and is a Court of Record. It follows then, that this Court, which has alone the Power of *deciding*, must also have the Power of *declaring* the Law ; and that their Declaration must be binding upon the Subject as long as it stands
unaltered

unaltered by the *whole Legislature, which* only can controul its Jurisdiction. It was likewise said, that this Power is no more than what is exercised by the King's Bench, and every other Court. For that *their* Judgments are Laws, unless altered upon the Opinions of the rest of the Judges, or repealed by Act of Parliament.

Certain it is, that the House of Commons is become the sole Court of Judicature in Cases of Election. And for that very Reason, the Exercise of Jurisdiction is a Disclaimers of legislative Authority in that Instance. For what is the very Nature and first Principle of Judicature? Is it not that it shall govern itself by the known Rules of Law? Does not the difference betwixt judicial and legislative Power consist in this? that the one *makes*, the other *executes* the Law. *Jus dicere* is the Province of the one; *Jus dare* the Attribute of the other. I appeal to every Man who has seen or has an Idea of the Practice of every Court of Law in the Kingdom, whether they do not regulate themselves by known and fixt Rules?

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And

And in all Cases, where Precedents in point of *Fact* are wanting, whether they do not make their Judgments conformable to the Principle, and bring them with the Line of some established Law ! Such Judgments if acquiesced in by the other Courts, become a part of the common Law of the Land.

But to blend Legislature and Judicature both together, is perverting the Understandings of Men, and confounding the Essences of Things. The Law does not derive its Authority from the Determination of any Court exercising Judicature ; on the contrary, the Determination of such Court, derives all its Authority from its Conformity to the Law.

On the Principle I now lay down, the House of Commons have always acted in their *Judicial Capacity*. For in Elections, what is the Course of Proceeding, but to try, who has the legal Right ? In regard to Counties, We enquire, whether the Freehold is *real* or *spurious* ; in corporate Boroughs, We examine where the Charter ; and in prescriptive

tive ones where *Usage* has fixt the Right of voting. Will any Man tell me, that We are to decide *without* examining at all? and if We *do* examine, to what Purpose is it, but to find out in whom the Law has invested the Right, and to him adjudge it.

It was alledged, that Paupers stand disqualified on the Authority of a Resolution of the House of Commons, though *not* disqualified by the Law of the Land. *The not receiving Alms*, is a Condition annexed to most Resolutions concerning the Right of Elections, but is manifestly founded on the first Principle of every Law that has regard to Elections, which is, *that * Elections ought to be free*; for such as are subject to the Will of others, cannot be free; but impair that Right of *Free Elections*, which common to all.

There was indeed a feeble Attempt made to distinguish betwixt *declaring* and *creating*

* Statutes of Westminster. Bill of Rights, &c.

a *Law* ; and that in this Instance, We did not *create* but only *declare* the Law. This is a Distinction without a Difference ; for if a Declaration can make that *Law*, which was not *Law* before, it creates *Law* ; if done in Opposition to the known Laws is *dispensing* with Law ; and to all Intents and Purposes is an Assumption of that legislative Power which belongs not to the King, nor to the Lords, nor Commons separately, or any two jointly.

All three Powers uniting and agreeing *make Law*. Each in its separate State is to be governed by Law ; as that great Judge and Patriot Lord Chief Justice Holt, emphatically expressed himself (on the Case of Ashby and White,) “ *Lex et consuetudo Parliamenti*, “ is as much the Law of the Land, as any “ other Law. ’Tis the Law gives the Queen “ her Prerogative ; ’tis the Law gives Jurisdiction to the House of Lords ; ’tis the “ Law that *limits* the Jurisdiction of the “ House of Commons.”

You will now perhaps ask me, are there no just Causes of incapacity, still unnoticed
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by Law? Are Treason and Felony the only Crimes that make a Man unfit to be invested with the solemn Trust of enacting Laws; and the Disposal of the public Money? Most certainly *not*. And Lord Chief Justice Coke, who was as able, discerning and decisive in the House of Commons, as at the Bar, both saw that Incidents might arise to require new Disabilities, and pointed out the Way to make them; viz. by Act of Parliament, for he says, * “ *That he which is eligible of common Right, cannot be disabled but by Act of Parliament.*” I need not recite the several Acts of Disqualification, that actually have passed, both with *general* and *particular* Views. Of the first Sort are those already mentioned, which exclude the Officers of Revenue, &c. of the second are, those which disqualify the South Sea Directors, and others, for Breaches of public Trust. And if I had not the Authority of Lord Coke, I should assume these Acts, as undeniable Proofs, that an Act of Parliament can alone constitute *a legal Incapacity*.

* 4 Inst. 47

For if a Vote of the House is self-sufficient for the Purpose, those Acts are all frivolous ; nor would the House of Commons have endured their being brought in at all ; for they are too jealous of their Privileges to suffer the other Parts of the Legislature to interfere, where they claim an *exclusive* Jurisdiction.

I ask then, where was the Freeholder of Middlesex to find the *legal Incapacity* of Mr. Wilkes ? Is it in common Law ? No. Is it in the Statute Books ? No. Is it in the Journals of Parliament ? No. I repeat then this Proposition, that no Man *can lose* his Right by a Law, which he *cannot* know. Our Laws were instituted to be, † “ *Our Pillar of Cloud by Day, and our Pillar of Fire by Night,*” to lead us in the right Way ; but not to arise like pestilential Vapours and Exhalations, that blast us unseen, and destroy us without Warning.

Other Arguments of Fitness, Expediency, and above all, the Honour and Dignity of

† Exod. xiii.

the House were much pressed upon us. And tho' we were often reminded of Our acting in a *judicial Capacity*, we were as often called off from that *distributive Justice*, which is the Principle of Judicature; to Incitements of *Honour without Law*, which Lord Bacon calls *wild Justice*. For it was frequently asked, what could the House do? We had expelled Mr. Wilkes; and declared positively he should sit no more among us. But the Freeholders had chosen him again and again, in defiance of us all. And were *we* to budge? Were *we* to give way to their rash Humours? Was the House of Commons to be over-borne by the *Scum* of the Earth (as were called) the *Freeholders of Middlesex*? were *they* to make us eat our own Words, and revolt from our own Resolution? For on a former Day the House had determined, "That Henry Lawes Lut-
terel, Esq; *ought* to have been returned."

——— On this Decision (which eventually decided the whole) there was indeed one Circumstance totally omitted, (a Circumstance in old fashioned Times thought essential to and inseparable from Justice) I mean hearing the
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Parties ; for on the 14th of April *no* Counsel were heard. On the 8th of May Counsel *were* heard. But *then the fatal Deed was done*; and *because*, without hearing the Freeholders, on the 14th of April the House resolved, they *ought* to lose their Right ; *therefore* the House could do no less, for its Dignity and Honour, than determine on the 8th of May, they *had* lost their Right.

I confess the Difficulty, the Dilemma of our Situation ; but am to charge those with it, that brought us into it. They did it not without Expostulation, Deprecation, Warning : For it was moved and seconded, by Persons not in Administration, that Mr. Wilkes's Petition *might lie upon the Table* ; and it was earnestly recommended to take no Notice of *him* or it. But *more suo precipites*, they took up this Business, went on, and finished it. Even now, I wish they would tell us, what their Policy was, and what their Motives ? What good did they mean *to do* ? What evil to *avoid* ? We all know what a World of Troubles had been prevented, if Mr. Wilkes had
never

never been meddled with; but one cannot conceive what *Benefits* could be *expected* from his Expulsion, to compensate for the (more than probable) Mischiefs of stirring up so fatal a Contest as that of bringing the Honour and Dignity of the House in Competition with the Law of the Land, and the *most sacred Right* of the People?

Early in the first Day's Debate we were told by a very eminent Person (whose Authority on the Side of the Freeholders I quote, as I would Serjeant Glynn's against them) that *The Freeholders had certainly a Right to vote for Mr. Wilkes, and the Sheriff did right to return him: He was bound by his Oath so to do: He had the Law before him: But we were to consider, what was fittest for us to do in our present Situation, for the Support of our own Honour and Dignity.*

Our Situation was precisely that of a Court of Appeal, sitting in Judgment on a Case brought before us from a *Court of Election*. What then is the Nature of our Jurisdiction but this? If a returning Officer, thro' Mistake, or Corruption, has done injustice, we are to *reverse* his Judgment; but if he has

acted according to Law, and the Oath he has taken, We are to *affirm* it; the House of Commons being in Cases of Elections, what the Lords are in all other Cases, the *dernier resort* of Justice. The Officers of inferior Courts indeed, (the Judges and all Returning Officers) are bound by their Oaths to determine according to Law; but Members of the Legislature decide upon *Honour* without Oaths; the Peers take none, even in the Case of Life and Death. But can Imagination represent a Cause, in which a Peer can separate the Idea of Honour from that of Justice? Suppose that a Writ of Error should come from the Court of King's Bench; and it should appear that the Judges had determined the Matter according to the clear, positive, precise Directions of an Act of Parliament; with what Astonishment would it strike the Audience, if one of the Law-Lords should rise and say; *My Lords, this Judgment was according to Law, which the Judges were bound by their Oaths to obey; but your Lordships have not taken the Oath they took; and it is for your Honour and Dignity to reverse this legal Judgment.*

Does not the Analogy hold with the House of Commons? For County-Elections are settled

tled by Acts of Parliament, which define the Right of the Voter, and direct the Mode of Election and Return. The Sheriff is bound by an Oath to make the Return according to Law, and liable to great Penalties, if he makes it otherwise: And, as the Sheriffs of Middlesex (it was not denied) *did* execute the Law according to their Oath, their Judgment could not be reversed but by dispensing with the Law. And, why the same Law that bound the Sheriffs by an Oath, was *not to bind* the Conscience of the Member of Parliament, I leave to some abler Casuist, than I am, to explain.

There is one Difference (I own) betwixt the judicial Capacity of a Peer, and that of a Commoner. It is this; Peers sit in Judicature as Judges *only*; Commoners (in their Jurisdiction) are not Judges only, but Trustees of the People; and as often as a Question arises that comprehends not only the personal Concerns of Parties, but the Rights of the People, then are they under the double Obligation of deciding, *legally*, as Judges of the Cause, and, *constitutionally*, as the Representatives of the People.

But after all ; what Injury has been done to the Freeholders of Middlesex ? Of what right have they been deprived ? Why truly, they have been prevented from chusing a Man to represent them, who has been expelled the House of Commons ; convicted of Sedition and Obscenity ; and now shut up in a Prison. But they had the whole Nation open to them, to chuse a fit, discreet, worthy Member at *Liberty to serve them.*

All this is very true ; but the Freeholder thinks that his *Free-will is his Right* ; which the Law gave, and the Law alone can take away. Suppose this very Freeholder lives in a Cottage with a Close or two adjoining, that has long been the Possession of his Family, and descended from a frugal, laborious Race of Ancestors to himself. A Great Man in the Neighbourhood takes a fancy to this Tenement, and wants to bring it within his Park, or Garden, to make every thing about him round and compleat. He offers the Freeholder a pleasanter Mansion, larger Estate, and bids him look about and find a Place that will maintain him and his family better. But
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the Man does not care to part with his little Inheritance, and cannot be prevailed on, by Love or Money, to give it up. Can any thing be so provoking as this Man's Obstinacy! And is it to be endured that a great, opulent Gentleman shall have his pleasure thwarted, and his Pride checked by a saucy Freeholder, the Inhabitant of a mean Cottage? But, in this free Country, the Law has fixed a *Gulf* betwixt them, that neither the Lord of the Manor, nor the Cottager can pass. The same Law that *bounds* the Freehold, *fences in* the *Franchise* likewise; and if the Guard is taken from the one, there is no Protection remaining for the other. Various indeed are the Modes of Administration, yet there are but two Principles of Government in the World: that of *Men* and that of *Laws*; (*Imperium Legum et Imperium Hominum*) the one deals out her Dispensations by the single Rule and Measure of Equality; knows no Distinction of Persons, nor Difference of Stations; is deaf to Intreaty, free from anger; insensible of Hatred or Affection, void of Prejudice. This Law allows no Honor, but what arises from Obedience to herself; and assumes no Dignity but what is consistent with

with her own Preservation. Where this Law prevails, *there* is Liberty*.

The other kind of Government is that, where the executive Powers are vested in one Man, or a Collective Body of Men, with no Rule to guide them, but Discretion only; under which if the Poor escape Insult, or the Rich Plunder, they are to thank the Virtue of their Governors; but not command Security as their Birth-right and Possession.

In the Conduct of Great Empires, especially in foreign Affairs, many Advantages must undoubtedly be lost, and many Inconveniences accrue from the Restrictions that lie upon the State; But the true, Intelligent Friend of Liberty, looks up to the Constitution as he does to Providence, and for the Sake of universal Good submits to partial Evil.

Long as I have troubled you, I cannot close my Narrative without informing you of *one*

* Regem *hominem* esse, à quo impetres, ubi jus, ubi injuria opus sit: esse gratiæ locum, esse beneficio; et irasci et ignoscere posse: inter amicum atq; inimicum discrimen nosse. Leges, rem surdam, inexorabilem esse, salubriorem melioremq; inopi quam potenti.

LIVY.

Argument

Argument *more*, which was much relied on in the Debate. It was contended, that Incapacity naturally grows out of Expulsion; For the Occasion that calls for the one, makes the other necessary, and without both, *one* would be *ridiculous*; for what would it signify to expel a Man this Week, that may take his Seat the Week after!

This Proposition then rests the Incapacity on the *Fact*, abstracted from all *Cause* of Expulsion whatsoever.

But when I see Discretionary Power operate against known Laws; and take away the natural Rights of Men, I am apt to question the Foundation of that Power; and if I was now writing on the Subject of Expulsion, I should trouble you with many Doubts both as to the Right, Reasonableness and Utility of Expulsion. Sure I am that whoever looks over the Journals, will find the Abuses of that Power infinitely greater than any Benefits derived from it. No necessity for it can be alledged; for if it was necessary in the House of Commons, it would be equally so in the House of Lords; but in the Case of the Earl of Macclesfield, the Power of Expulsion was disclaimed;

claimed*; nor is the want of that Power complained of. A Seat in the House of Lords is derived from the Crown; in the House of Commons from the People. Every legal Disability that lies against the Commoner, lies against the Peer :—Aliens, Minors, Convicts of Treason or Felony cannot sit in the House of Lords. But the House of Lords cannot prevent the King from making whomever he thinks fit, a Peer; nor can they, on any Plea of Infamy, or unworthiness, deprive a Peer, by a Declaration of their own, of his Seat amongst them†. Since then, the House of Lords, in the Case of one of *their* Members, has no Power, but what the Law gives, over the Rights of the Crown; let me ask, on what Foundation, do the House of Commons

* Lord Bacon and the Earl of Middlesex were both sequestered from Parliament; but, notwithstanding these Precedents, the House of Lords disclaimed the right of Expulsion in the Case of the Earl of Macclesfield.

† Charles Watson having committed a Murder, claimed to be tried by his Peers, as Earl of Banbury. The House of Lords resolved, “ He was *no Peer*.” But, when brought to be tried at the Old Baily, he still claimed his Privilege of Peerage; which, Lord Chief Justice Holt so far allowed, as to refuse to try him. For if he had a *legal* Right to a Peerage, the Vote of the House of Lords could not deprive him of it.

claim and exercise more than legal Power over the *Rights of the People?*

The first Instance of expelling was in the Reign of Queen Elizabeth, in the Case of Mr. Arthur Hall, but they carried their Power too far to be an Example; for they not only *expelled* but declared him incapable for ever; and levied upon him a Fine of 500l. to the Queen; which was going beyond all Idea of their Jurisdiction. In the following Reign, the Power of Expulsion was not looked upon, as a clear Point. For on the King's demanding the Dismission of Sir Christopher Pigot for speaking disrespectfully of the *Scottish Nation* (We find in the Journals that much dispute arose against his Dismission, viz. "*that the House could go no farther in their Punishment than committing to the Tower; that their Power was to sequester not dismiss.*" This almost brought to a Question, but by Assent flaid†.

† Journals, 16 February, 1606.

The long Parliament did indeed exercise the Power of Expulsion with a Vengeance; They expelled, I believe, half the House, and above * 50 in one Vote; insomuch, that they were forced at one Time to send to Prison for Members, under their Commitment, to make up a House†: But even that long Parliament, who usurped all the executive Powers of Government, and drove out every Member that did not concur with their own Designs, did never assume the Jurisdiction of the Law; nor take away the Right of Election to chuse even those whom they themselves had expelled, and declared incapable; as was the Case of Sir Wm. Pennyman, on whose Expulsion, a new Writ issued in 1642, but in 1645, we find that a new Writ issued in the Room of Sir Wm. Pennyman, *deceased*. It is true, there is no Record of the Return of this Writ, nor many other Writs during that Period. But as We know the Writ *did* issue, the Return to it was of Consequence, and Sir

* Journals, 22 January, 1643.

† Prynne.

Wm. Pennyman must have fat, till his Death, in the very Parliament that had both expelled and declared him incapable.

Here let us pause a Moment, and reflect on the two Precedents I have just quoted. The one of a Member of Parliament dismissed at the Personal Desire of the King; the other of 50 Members expelled in one Vote, by an usurping House of Commons, and declared incapable of sitting again.

I wish to God, the Supposition was more improbable than it is, that an House of Commons should ever fall into the opposite Extreme of the long Parliament, and become as abject and servile in raising up, as that Assembly was violent in pulling down, the Power of the Crown.

We know too well the chaste, disinterested, public Spirit of the present Parliament to think it possible, *they* should ever make an ill Use of any Precedent whatsoever; we have seen too many Proofs of that Wisdom and Virtue, to which alone the present Ministers

owe the Influence that carries their uniform Majority along with them, to believe, they can avail themselves of this Precedent to *destroy the Freedom of Election*; and on its Ruins build up a Government, *not affecting to stand upon any other Basis but that of Despotism, supported by Corruption*; but should such an Administration ever arise, what a prospect of Halcyon Days does this Precedent open? For over whom would Ministers, *unlike the present*, exercise this new Power of Incapacity included in Expulsion? Look to the Characters that now appear on the Stage of Politics. See who those Men are who stand highest in the Esteem and Confidence of the Public; whose Abilities are the strongest to expose, and whose Integrity, the firmest to resist the Designs of mischievous and arbitrary Ministers? At the first Meeting of the new Parliament, these Men (we may suppose) are to speak of bad Ministers as disrespectfully, at least, as Sir Christopher Pigot did of the *Scottish Nation*. Their Dismission is *therefore* demanded; peradventure in the same Form as that Message runs, in which the Lords told the House of Commons how *dis-*
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respectfully a Member of theirs had treated the Secretary of State's Letter. The Majority echo back the Message, with a Vote of Compliance, and Expulsions follow, accompanied by a Disability to be elected again. What are the Electors to do? For a plain, honest Voter has but one simple Rule to go by; viz. To vote for the Man *he likes best, and can trust most*. They resolve therefore to chuse again, whom they chose before: But the Court sends down Candidates equal to the Number of those who have been expelled; and it will be hard indeed, if the Influence of Government can't get a *few* Votes, or *one* Vote in every County, and in every Borough. The Election comes on; the Returning Officer, indeed, may be so aukward, that he can't dispense with his Oath, but returns the Candidate who had the Majority of legal Votes. But a Motion is made from the Treasury Bench that the Person ought to have been returned who had the *Minority* of Votes: in strict Conformity with the Precedent of the Middlesex Election, the Returns are *amended*; and for seven Years to come, public Business cannot fail of going

going on with the most perfect Harmony and Ease; since the Minister himself has had the Exchange of every unruly Spirit, that could have broken his Repose, and thwarted his Measures, for others of his own Choice and Calling: whilst these Members themselves will have the Glory of having been elected, not by common Freeholders, or vulgar Freemen, but the most august Assembly upon Earth, viz. the Commons of Great Britain in Parliament assembled.

I accuse not those, who have introduced this new System of Election, of an Intention to injure the Constitution. They think perhaps they have amended it. All I say is, the Constitution is *altered*; for till the 8th of May, no Idea was entertained, that a Right to sit in Parliament could be founded on any Title, but that of a Majority of *legal Votes*.

Innovations are dangerous and alarming always, but most so, when they touch Foundations. For still is that sentiment written in every English Heart, which prompted the
Barons

Barons of old to tell an innovating King,
Nolumus Leges Angliæ mutari.

It is not then to be wondered at, if the People are alarmed at a Change that affects them, in the tenderest, the most vital Part; the very Part which gives them their Rank, their Consequence, their Portion in the Legislature of their Country. For of the three Estates which compose it, the People are *one*. They act not in their Collective, but their Representative Body, in whom the Subjects at large, who sit not in Parliament themselves, have their Trustees and Agents to transact their particular, as well as general Business, promote their Interests and defend their Rights. —An Opinion may therefore arise, that the more Power the House of Commons gains, the more is gained on the Side of the People. No opinion can be worse founded. —'Tis Protection from Power; not Power, that a free People are to covet. For though the immediate Object of the Revolution was to reduce the *Regal* within the Limits of a *Legal* Power; yet it's general Principle was to explode *every* Pretension to Power above Law. And it is a
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preposterous Idea to suppose that the end of the Revolution was to extirpate Tyranny in one Branch of the Legislature, in order to raise it in another : Nay ; I would rather see absolute Power in either Branch of the Legislature, than in the House of Commons: For should our Liberty be violated by those to whom We have entrusted its Preservation, Our Condition would be most desperate, and Our Relief hopeless. Jealousy and fear are constitutional Virtues ; and whoever has reflected on the late Extensions of the Means of Ministerial Influence ; the more dangerous, because the more secret ; for Places and Pensions, that were all our Terrors formerly, are almost lost in the exhaustible Fund of Contracts, controuling and governing the Affairs of trading Companies, Revenues, Loans, and all the various Manœuvres of the Alley ; Whoever, I say, has an Idea of these Things, may well entertain a fear that all these Stories may some Time or another be opened, to gain a Majority in Parliament ; and if that Majority can be prevailed on to *assume* an unconstitutional Power, they may be likewise prevailed on

on likewise to make a fatal *Use* of that Power against the Rights of the People.

But far be it from me to detract from the just authority of the House of Commons in vindicating, asserting and maintaining those Rights committed to their Care. I know they have a constitutional Power of *Defence* for the People, but no *offensive* Powers against them. Of this Nature was the Resolution concerning General Warrants: We remember by whom, and on what Grounds, the Motion was opposed; that it was exclaimed against, as violent in Principle, though laughed at as impotent in Effect; and for two Sessions rejected as an Encroachment upon the Jurisdiction of the Law. But that Resolution pretended neither to make, nor to controul Law; for the History and End of it was shortly this. The Secretary of State had issued a General Warrant, according to the Usage of Office; but the violent and outrageous Manner of executing that Warrant, having raised a general Outcry, the Legality of General Warrants came first into Contemplation, and was afterwards brought in Judgment. The Circumstance of the War-

rant being executed on a Member of Parliament, introduced it to the Cognizance of the House. The House therefore had a Right to give their Opinion, as an Assertion of the Liberty of the Subject against the Power of the Crown; and as a Warning to Ministers, that they are liable to Impeachment for exercising, and (what is worse) claiming a Right to exercise illegal Powers against the People. It is true General Warrants were triable, and have since been condemned in the Courts of Law. But what can the Law do more in such Cases than give Damages, and lay the Costs of the Suit on the Party that is found Guilty. On whom then do these Expences fall? not on the Offender, but the Public itself, the very Party injured: The Crown takes upon itself the Expence of such Suits as are carried on against its Servants for Things done in the Course of Office. Such Expences become one of the Sources of Debt upon the Civil List, which according to the late Doctrine and Practice must, in all Cases, be paid by the Public; not indeed that we shall *see* this Specific Article of Charge; because it is *now* to be understood as a Parliamentary Maxim,

Maxim, that, the Civil List Debt is to be discharged, without the previous production of Account. If then the House of Commons had passed no Censure on General Warrants, their Silence in some future Day, might have been construed into Approbation; and Ministers, without the fear of Parliament, might have gone boldly on in defiance of the Law; whose Prosecutions in regard to their own Persons, are a Mockery of Punishment.—I ask Pardon for saying so much, on so obsolete a Subject, in which the Public has received every possible Satisfaction, both in the Censure of Parliament, and the Judgment of the Law: But the last Question revived the Memory of it; and I beg leave to add; That, had the Resolution concerning General Warrants done nothing more, it *satisfied the People*; by shewing a Friendly Disposition towards Liberty in Government, and in the House of Commons; and the short Administration of that Day had, at least, the Merit of giving their Country, one short Interval of Peace.

Lamentable, indeed, is the Discontent, and odious the Effects of that Temper which

now prevails in this distracted Country ; but *whose* are the Acts that have provoked ? And *where* resides the Spirit that has raised it ? ---Mr. Locke, where he speaks of Factions, as being fatal to States and Kingdoms, says, “ Whether the Mischief has oftner begun in “ the Peoples Wantonness, and a Desire to cast “ off the lawful Authority of their Rulers ? Or “ in the Rulers Insolence, and Endeavours to “ get and exercise an arbitrary Power over the “ People, I leave it to impartial History to determine †. Let History then, that History of our own Time, which every Man carries in his Mind, determine, from whence the Factions we complain of derive their Origin.—Faction takes its rise *there*, where Principles are adopted, and Measures pursued, that are incompatible with Freedom ; and it is the Nature of one Faction to beget another. Wise and good Men, indeed, will never resort to Violence, while there is a Possibility left of obtaining legal and constitutional Redress. But there are Men always ready to create Disturbances : Some, whose

† Locke on Government, Chap. 19.

Fortunes or whose Crimes make them desperate ; others who are ambitious to launch out of Obscurity into public Notice. All such Persons are the best Instruments of Service and Preservation to a bad Government : For as even bad Government is better than none, People will abide by an Administration that they suspect, despise and detest, rather than follow tumultuous Incendiaries, whose Activity can lead to nothing but Anarchy and Confusion. Amidst Factions like these is Freedom exposed to the greatest Perils ; for the Evil of Licentiousness consists in this ; That it gives willing Ministers a Pretence to exercise such Powers, as in their Operation and Example are extremely dangerous to Liberty. These are the Times therefore that call for the Attention, Vigilance, and Authority of grave, moderate, and important Men ; as well to check that Spirit of Licentiousness, which raises the Hand of Power ; as to stop that Hand, when raised, from striking through the Front of Licentiousness at the Vitals of Liberty.

But

But I must restrain myself, from General Enquiries, having obeyed your Commands, as well as I am able, in stating the Matter of the Middlesex Election, as far as the general Right of voting is affected by it.—If you think that what I have said in private to you, is fit for public Notice, I have no Objection to sending it to the Press. For the Question was not of a Nature to be confined within the Walls of the House. The Determination may be contended for as *a Law* to bind the Subject *until it shall be reversed*. Every Man, therefore, has a Right to know what that Law is, and every Argument and Principle on which it is founded.—I have related every Thing, I hope with Candour and Fairness. Some Allowances must be made for Prejudice, which I affect not to disclaim; for looking forward to the Station I must return to, when I am no longer a Member of Parliament, I feel myself *diminished*, as an Englishman, in the Possibility of seeing an House of Commons, *Not elected by the People*. For, if England can never be undone but by a Parliament, the People must be infatuated and corrupt beyond the Bounds of human Depravity, to elect a Parliament

ment to undo themselves. But as long as they are an *honest* and *free* People, they will have some Controul over even a slavish and dishonest Parliament. For tho' Members may be apt to forget who *made*, they will remember always who can *un-make* them; and there have been Times when the Fear of an approaching Election has made a Majority *within* yield to the *Majority without* Doors; and not only prevent the Execution of dangerous Projects; but rescind Acts that *have* passed, injurious and offensive to the People.

Sacred are the Privileges of Parliament: Sacred is the Right of the Crown. May the Excellent Prince, who now wears it, long live the brightest Example of every Personal Virtue, and Domestic Happiness; and may His Ministers by advising such Measures only, as tend to the Peace and Honour of their Country, gain the Hearts of the People as sincerely to every Part of his Government, as they are un-alterably attached to his Person. But sacred above all Things are the *Rights of the People*; and may the best of Kings be the blessed Instrument of transmitting to his own
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Posterity, the Preservation of those Rights, which His Royal and Illustrious House was appointed to maintain. — Families however, like Individuals, whether Royal, Noble, or Plebeian, are all treading the common Road of Mortality. But the Constitution of Great Britain, ought to be immortal, if any thing human can be made so; and the *main Pillar* which sustains that Constitution is the *Right* and *Freedom of Election*.

I am, yours, &c.

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